

### **REMARKS**

The comments, remarks and arguments following were presented in the original reply to the March 6, 2003 final action. We preface them with some comments brought up in a phone conversation with the examiner which led to this RCE submission. The key elements of the present invention are the presence of: (a) a parachute structure, which if using small hydrophilic molecules require 2 such molecules, e.g. glucosamines, attached to the branching unit and (b) a photosensitizer as a therapeutic compound. Further restriction can come from adding a spacer molecule between the branching (parachute structure) and the therapeutic compound. The claims have been limited from the claims, originally submitted in 2000, in the scope of the materials/chemical structures to reflect the earlier prosecution of this case. Chemicals and combinations excluded from the present claim set are reserved for a divisional/c-i-p application which will be submitted during the pendency of the current case

A key point to clarify in the recent interview at the examiner's office in Arlington (May 28, 2003), and in the action of March 6, 2003 is the fact that as stated in the reply to the first action, the election restriction selected by the examiner is not clearly the one orally offered or written by applicants in their reply to the election/restriction of Paper 7. As the claim 1 called for, we selected as the parachute structure - two glucosamines bonded to a branching unit (claim 2) trimesinic acid trichloride (written reply), adjusted to triazine trichloride (last phone call), and this parachute structure was bonded through the branching unit to the therapeutic structure, a photosensitizer - bacteriopheophorbide or chlorin (written reply) adjusted to pheophorbide (last phone call). This exemplified the basic generic claim in detail. The spacer as a subset of preferred embodiments was not selected in the written reply. Over the phone it was clearly stated that the spacer was not considered at this time as a critical component of the most general embodiments of the invention and should not be part of a first search. To satisfy the examiner's verbal request, even after cautioning that the spacer is not part of the most basic complex of the present invention, the beta-amino acids were indicated as a possible structure.

The basic premise, novelty, and utility is a complex comprising a parachute structure and a therapeutic compound. Based on the examiner's written and oral comments this claim "1" is

allowable when the specific structures identified in the prior paragraph are searched. In line with this and the in person interview on May 28, 2003 we have taken the specifics and the basic limitations into a new set of claims presented as claims 24-33 on pages 2-3 of this reply. The prior claims are withdrawn. To the extent the prior claims overlap with the specific structures claimed in claims 24-33, they are cancelled. A divisional cip is envisioned for the withdrawn claims and unsearched moieties and possibly to supplement the cip filed in December, 2000.

Due to the limited instruction as to what actually is considered allowable material, if we have erred in drafting the new restricted claims by not adding the spacer, beta-amino acid to the basic claim, then we are willing to work with the examiner to possibly draft modified allowable claims through an examiner's amendment.

The following is meant to reinforce why the prior art presented does not limit the allowable material as claimed and disclosed in the present invention. Accepting the limitations of the allowable material from the first search by the examiner, it is important to clarify the following points. The complex defined in paper 9 by "a glucosamine bonded to an anti-tumor compound through a peptide linker" does not describe an embodiment of the present invention as claimed in claim 1. As identified above, in the words of claim 1 and of the specification, and in the figures, the glucosamine as an example of a hydrophilic moiety must be part of a parachute structure. Especially as pointed out during the election/restriction process, in writing and orally, with glucosamine selected, a parachute structure requires at least two glucosamines bonded to a branching unit. A mere glucosamine cannot read 'on the parachute structure limitation' as stated by the examiner on page 5 of paper 9. One skilled in the art of chemistry would understand that, while a polysaccharide or even possibly an oligosaccharide might be 'complex' enough to create a parachute structure by itself, the size and complexity of glucosamine would not satisfy this criteria. This point is also why the new basic claim 24, based on selection of glucosamine for the hydrophilic moiety, has the restrictions given in line 4 of the claim.

If any of these arguments make it clearer why the search only uncovered allowable material and did not locate an actual embodiment covered by the claims, we would appreciate a removal of the Final Action status in addition to an agreement on allowance and reopening of the

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Amdt. dated August 5, 2003 (June 6, 2003)  
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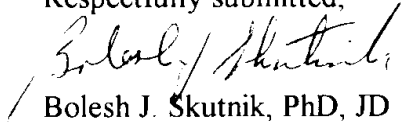
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search by the examiner for overlap with the prior art. If the examiner agrees we would then present additional new claims directly derived from the originally/amended claims.

With these changes and remarks it is believed that the disclosure is now in condition for allowance for at least a selected number of species. Reconsideration is respectfully requested. An early and favorable response is earnestly solicited. If necessary, a telephone call would be appreciated to discuss any further final changes to be made to render the claims allowable. Thank you.

Dated: August 5, 2003  
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Respectfully submitted,

  
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